



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the applicant entitled to a return of all or a portion of the security deposit including the filing fee for this application?

Background and Evidence

The rental unit was a bedroom in the lower portion of a 2 story residential house. The tenants shared the common areas including the kitchen, bathroom and living area with another tenant occupying the second bedroom in the lower level.

The upper level contained two bedrooms which were occupied by students who had separate tenancy agreements with the landlord. The landlord resided in the living room area on the upstairs level and shared this area plus the bathroom and kitchen on the upper floor with the students.

The landlord testified that he also shared the downstairs bathroom with the tenants in the lower portion of the house. The laundry area was also downstairs and shared by all tenants in the house. The tenant testified that he was aware the common areas were to

be shared with the other downstairs tenant but was not aware that the landlord would also be sharing the bathroom. However, the tenant did not dispute that the landlord had access to the downstairs bathroom and that it was shared with the landlord during the tenancy.

The landlord owns the rental property.

Analysis

Before making any finding on the merits of the claim, I must determine if I have jurisdiction under the Act to make a decision on the application before me.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to:

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

The tenant acknowledged that the bathroom facilities in the living accommodation occupied by the tenants were shared with the landlord who is the owner of the accommodation. Therefore, I find that the Act does not apply to this living accommodation.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that I do not have jurisdiction over this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 22, 2016

Residential Tenancy Branch